

DEPARTMENT OF STATE REVENUE

Revenue Ruling # 99-02 IT

June 4, 1999

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

The taxpayer requests the Department to rule on whether certain purchases of equipment are exempt from Indiana gross income tax.

STATEMENT OF FACTS

The taxpayer is in the business of processing flat-rolled steel. The taxpayer negotiated contracts with several companies for the purchase of equipment to be used in a newly constructed facility in Indiana. Under the terms of the contracts, the taxpayer is responsible for any Indiana gross income tax imposed on the sales of the equipment.

The bulk of the equipment is being purchased from two equipment manufacturers that are nonresident corporations with a business situs in Indiana. However, the Indiana business situs had no involvement with the initiation, negotiation or execution of the contracts, nor will the Indiana business situs have any involvement with the performance of the contracts. The taxpayer also entered into several other equipment purchase contracts with corporations who are nonresidents of Indiana and who have no Indiana business situs.

The equipment is to be manufactured outside of Indiana and delivered within Indiana by the equipment manufacturers. However, the equipment manufacturers are not responsible for the assembly and start-up of the equipment. Rather, the taxpayer is responsible for the assembly and installation of the equipment after delivery. Under a separate contract, the taxpayer anticipates that it will pay the equipment manufacturers to supervise the assembly and installation of the equipment.

DISCUSSION

IC 6-2.1-2-2 imposes a gross income tax on the gross receipts from a trade or business unless the receipt of gross income is exempt under IC 6-2.1-3 or a deduction is allowed under IC 6-2.1-4. Thus, payment by the taxpayer to the equipment manufacturers would generally be subject to the gross income tax. However, IC 6-2.1-3-3 states that "business

conducted in commerce between the state of Indiana and either another state or a foreign country is exempt from gross income” The taxpayer maintains that the business transactions do constitute interstate commerce and are exempt from gross income tax. Regulation 45 IAC 1.1-3-3 states:

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- (c) Gross income derived from the sale of tangible personal property in interstate commerce is not subject to the gross income tax if the sale is not completed in Indiana. The following examples are situations where a sale is not completed in Indiana prior to or after shipment in interstate commerce:

* * *

(5) A sale to an Indiana buyer by a nonresident with an instate business situs or activities but the situs or activities are not significantly associated with the sale because it was initiated, negotiated, and serviced by out of state personnel, and the goods are shipped from out of state. The instate business situs or activities will be considered significantly associated with the sale if the sale is initiated, negotiated, or serviced by instate personnel.

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Therefore, the amounts received by the equipment manufacturers are exempt from Indiana gross income tax.

RULING

The Department rules that the receipts from the sale of equipment to the taxpayer by the equipment manufacturers is exempt from the Indiana gross income tax.

CAVEAT

This Ruling is issued to the taxpayer requesting it on the assumption that the taxpayer’s facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this

ruling, a change in a statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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